(b) the house at 38A was built by the defendant's late husband with the permission of the then owner of the land; and

(c) the defendant and her family had been residing at 38A from 1956 or thereabouts.

However, the crucial fact in dispute was the nature of the representation or promise made to the defendant and her family which encouraged or induced them to move to 38A and expend money in building a house on land which did not belong to them and thereafter to stay on the premises.

On this point, the trial judge had made a finding of fact based on oral testimony, after having considered the evidence of the witnesses and formed his opinion on their credibility. We are unable to say that on the evidence before him the trial judge's finding on this crucial fact was wrong, and we are of the opinion that that finding ought not, on well-established principles, to have been disturbed.

The finding of fact in question in this present case relates to a finding of a specific fact (*i.e.* whether the representation as alleged by the defendant had been made) and not to the drawing of an inference. A distinction must be drawn between a judge's finding of a specific or primary fact based on conflicting testimony, and the inferences to be drawn from undisputed facts or from facts deposed to by witnesses and found by the court. While an appellate court might be more willing to form an independent opinion upon the proper inference to be drawn, it would always be extremely reluctant to reject a finding by a judge of a primary fact deposed to by witnesses especially when the finding is based on the credibility or bearing of a witness. As has been said by this court in *Goh Leng Kwang* v. *Teng Swee Lin*,[3] at p. 8:

"In the final analysis it was for the trial judge to balance the probabilities and to evaluate the weight of evidence on either side and it is not for this court to do so."

We would therefore restore the trial judge's finding that no expectation that the defendant be permitted to stay at 38A permanently had been created. This does not, however, mean that the plaintiff should be entitled to an order for possession without more. At the very least, and this the plaintiff does not dispute, the defendant having expended money in building her house on the premises with the then owner's consent, there is an equitable estoppel or an estoppel by acquiescence operating in favour of the defendant, thereby creating in her favour an equity which has to be satisfied before the plaintiff can recover possession.

On the basis of the trial judge's finding, this equity obviously cannot extend to protecting the defendant's occupation of 38A permanently. Neither would it therefore require that the defendant should be compensated with the costs of finding alternative accommodation in order that the equity may be satisfied.

On the evidence, the extent of the defendant's equity was merely to protect her from eviction without being compensated for the money expended in erecting the house. The defendant's equity can therefore be satisfied if she were so compensated.

As it was common ground that the replacement cost of the house has been valued at $24,207, we therefore restored the trial judge's order that the plaintiff be entitled to possession of the premises upon payment of $24,207 to the defendant. We further ordered that the defendant vacate the premises by May 31, 1987.

Order accordingly.

Solicitors: *Ng Liang Poh & Co.; Cheong Yeo & Partners.*

RICHARD LIONG KUO CHI v. THE ATTORNEY-GENERAL

[O.Cr.J. (Rajah J.) November 28, 1986]

[Singapore – Criminal Motion No. 56 of 1986]

Criminal Procedure – Sentencing – Peremptory sentences and default sentences – Maximum term of imprisonment – Whether both types of sentences can be concurrent – Application for declaration – Whether application is misconceived – Criminal Procedure Code (Cap. 113, 1970 Ed.) ss. 223 & 326.

The applicant was charged, tried and found guilty on nine counts under section 6(a) of the Prevention of Corruption Act (Cap. 104, 1970 Ed.) read with section 34 of the Penal Code (Cap. 103, 1970 Ed.) and four counts under section 5(1) of the Prevention of Corruption Act (Cap. 104, 1970 Ed.) and was sentenced to varying terms of peremptory imprisonment from eight months to three months and to pay penalties ranging from $42,800 (in default four months' imprisonment) to $2,025 (in default two weeks' imprisonment) on the 13 counts. All

sentences were stated by the trial judge to be concurrent. The applicant was unable to pay the imposed penalties on the 13 counts. The default sentences became applicable.

The applicant applied by way of criminal motion for two declarations, *i.e.* (a) that the maximum term of imprisonment imposed on him by the court in the above matters was ten months and (b) that the sentences imposed in the above matters (inclusive of the default sentences) were to run concurrently for a period of ten months from August 18, 1986, the date of conviction.

Held, dismissing the motion: the application was misconceived because there is no provision under our Criminal Procedure Code or the Supreme Court of Judicature Act whereby such an application can be made.

Obiter dictum: It may well be that all is not lost for the applicant yet. Possibly the time to make his application could be when the applicant has served what he considers to be his full term of imprisonment imposed by the trial judge and has not been released by the prison authorities. Then perhaps he could make his application under section 326 of the Criminal Procedure Code (Cap. 113, 1970 Ed.).

Cases referred to:

(1) *Kulwant Singh* v. *Public Prosecutor* [1986] 2 M.L.J. 10.
(2) *Public Prosecutor* v. *Yuen Peng Lam* [1969] 1 M.L.J. 211.

CRIMINAL MOTION.

Cheng Tim Pin for the applicant.

Jennifer Marie (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Rajah J.: The applicant in this motion is an architect. He was charged and tried and found guilty on nine counts under section 6(a) of the Prevention of Corruption Act (Cap. 104, 1970 Ed.) read with section 34 of the Penal Code (Cap. 103, 1970 Ed.) and four counts under section 5(c) of the Prevention of Corruption Act (Cap. 104, 1970 Ed.) and was sentenced to varying terms of peremptory imprisonment from eight months to three months and to pay penalties ranging from $42,800, in default four months imprisonment, to $2,025, in default two weeks' imprisonment, on the respective 13 counts. All sentences were stated by the trial judge to be concurrent. The applicant is unable to pay the imposed penalties on the said 13 counts. The default sentences have therefore become applicable. On each of the 13 charges where the default sentences apply, the peremptory plus default sentences will be as follows:

(1) DAC 1054/83 (P10) – (8 + 2) = 10 months
(2) DAC 1055/83 (P11) – (5 + 1) = 6 months
(3) DAC 1056/83 (P12) – (8 + 2) = 10 months
(4) DAC 1057A/83 (P13A) – (8 + 2) = 10 months
(5) DAC 1058/83 (P14) – (8 + 2) = 10 months
(6) DAC 1059/83 (P15) – (5 + 1) = 6 months
(7) DAC 1060/83 (P16) – (5 + 1) = 6 months
(8) DAC 1061/83 (P17) – (4 + ½) = 4½ months
(9) DAC 2184/83 (P18) – (4 + ½) = 4½ months
(10) DAC 1052/83 (P8) – (3 + 4) = 7 months
(11) DAC 1053A/83 (P9B) – (3 + 1) = 4 months
(12) DAC 1048A/83 (P4B) – (3 + 3) = 6 months
(13) DAC 1049A/83 (P5B) – (3 + 1) = 4 months

It is against this background that the applicant, Richard Liong Kuo Chi, applies to the High Court by way of criminal motion for two declarations, namely, (1) that the maximum term of imprisonment imposed on him by the court in the above matters is ten months and (2) that the sentences imposed in the above matters (inclusive of the default sentences) are to run concurrently for a period of ten months from August 18, 1986, the date of conviction.

It is contended by the learned Deputy Public Prosecutor that this application is misconceived in that the High Court has no jurisdiction to entertain an application of this nature and she cites in support the judgment of Coomaraswamy J. in the case of *Kulwant Singh* v. *Public Prosecutor*[1]:

> "The applicant was awaiting committal proceedings before a magistrate for the offence of rape. He made two statements to the police. One was under section 121(6) of the Criminal Procedure Code. The other was made earlier. He applied to the High Court to be furnished with certified copies of a number of documents arising out of the investigations. He was furnished with a certified copy of the first information report. His application for other documents was abandoned and he proceeded only with his application for a certified copy of the earlier statement to the police.
>
> **Held** *(inter alia):* (1) the High Court has no jurisdiction to hear this application because:
>
> (a) there is no provision in the Supreme Court of Judicature Act giving any such jurisdiction;"

The motion papers of the applicant make no reference whatsoever to the statutory provision or provision under which he seeks to invoke the powers of the High Court. Counsel for the applicant was not able to cite any such statutory provision. I understand from the learned Deputy Public Prosecutor that the applicant appealed against both the conviction and sentence of the District Court and his appeal under both heads were dismissed by the High Court. In my view, it was at this stage that the appellant could and should have asked the court to deal with

the problem of his maximum term of imprisonment. It seems to me that there is no provision under our Criminal Procedure Code or the Supreme Court of Judicature Act whereby such an application can now be made and that therefore this application is misconceived.

It may well be that all is not lost for the applicant yet. Possibly the time to make his application could be when the applicant has served what he considers to be his full term of imprisonment imposed by the trial judge and has not been released by the prison authorities. Then perhaps he could make his application under section 326 of the Criminal Procedure Code. This, however, is a matter for the future.

Mr. Cheng's argument is that in the same way that sentences of peremptory imprisonment can be made to run concurrently, default sentences in the particular circumstances of this case could also run concurrently. In other words, what he is saying is that in this case the maximum sentence to be served by the applicant should be ten months, being eight months on the peremptory sentences plus two months on the default sentences and not the maximum of eight months' imprisonment plus the sum total of the default sentences.

Section 223(b)(iv) of the Criminal Procedure Code to my mind prohibits a magistrate or district judge trying the case from doing what the applicant asks me to say that the learned trial judge should have done. Section 223(b)(iv) says:

"223. Where any fine is imposed under the authority of any law for the time being in force then, in the absence of any express provision relating to such fine in such law contained, the provisions following shall apply:

(a) ...

(b) in every case of an offence in which the offender is sentenced to pay a fine the court passing the sentence may at any time before the fine has been paid in full in its discretion do all or any of the following things:

(i) ...

(ii) ...

(iii) ...

(iv) direct that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may be sentenced or to which he may be liable under a commutation of a sentence."

Reading section 223(b)(iv) together with section 223(c)(i) and (ii) which enacts:

"(c) the term for which the court directs the offender to be imprisoned in default of payment of a fine shall be as follows:

(i) if the offence is punishable with imprisonment for any term exceeding six months it shall not exceed one half of the term of imprisonment which is the maximum fixed for the offence;

(ii) if the offence is punishable with imprisonment for any term not exceeding six months it shall not exceed the term of imprisonment which is the maximum fixed for the offence;"

it appears that a trial judge cannot make a default sentence to be served concurrently with that of a peremptory sentence. It seems to me also that by virtue of section 223(b)(iv) an imposition of a fine or penalty, as the case may be, if not paid, attracts a default sentence which has to be served "in excess of" the peremptory sentence imposed.

It seems to me therefore that the default sentences have to be served out in full but subject to the provisions of section 223(c)(i) and (ii). See *Public Prosecutor* v. *Yuen Peng Lam.*[2] In this case, the Malaysian court was construing section 102(c) of its Courts Ordinance 1948 (now replaced by Act 92 of 1972) which reads:

"(c) When imprisonment is directed in default of payment of a fine or of costs or compensation ordered under the authority of any law for the time being in force, such imprisonment shall be consecutive to any other term or terms of imprisonment so directed and to any sentence of imprisonment otherwise imposed."

and held that the default sentences in lieu of fines imposed on two charges should run consecutively. Our section 223(b)(iv) is almost *in pari materia* with section 102(c) of the Malaysian Courts Ordinance 1948 except that for the words "shall be consecutive" in the Malaysian Act our section uses the words "shall be in excess".

Whether the sentences should, in the instant case, be concurrent or consecutive is purely a view which I express and which cannot in my view be binding on the applicant. His proper remedy at the proper time would be against the prison authorities for what could be alleged by the applicant to be illegal or improper detention.

In view of what I have said, the motion is dismissed. There will be no order as to costs.

Order accordingly.

Solicitors: *Yap & Yap.*